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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1972

NO. 72-147

BOB BULLOCK, ET AL,

Appellants,

v.

DIANA REGESTER, ET AL,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

BRIEF FOR APPELLEES REGESTER, ET AL

BRIEF OF APPELLEES

This brief is tendered on behalf of the original plaintiffs, Diana Regester, et al, who initiated this action challenging the redistricting of the Texas House of Representatives on various grounds, including excess deviation, irrationality and the invidious effect of the multi-member districts upon racial and ethnic minorities. It is further submitted on behalf of the intervening Texas AFL-CIO, and various individual members thereof, including Elbert Turner, a Black resident of Dallas County; these intervenors challenge the redistricting plan on various grounds, including the dis-

criminatory impact of multi-member districts in Dallas and Bexar Counties on lower-income residents and racial and ethnic minorities. Finally, this brief is submitted on behalf of a group of intervenors, Dick Reed, and others who have been in the past and intend in the future to be candidates for the Legislature from Dallas County. These intervenors challenge the at-large districting scheme in Dallas on the ground that the campaign costs required to wage a legislative campaign in Dallas County effected a discrimination against lower and middle-income voters and candidates.

JURISDICTION

The heart of the trial court's action is a declaratory judgment that the reapportionment of the Texas House of Representatives violated the Fourteenth Amendment. The trial court did grant relatively narrow injunctive relief implementing new single-member legislative districts for Dallas and Bexar Counties. It remains our view that this Court lacks jurisdiction of this appeal. *Board of Regents v. New Left Education Project*, ____U.S.____, 92 S.Ct. 652 (1972). For a three-judge court is required only "where the challenged statute or regulation albeit created or authorized by a State Legislature, has State-wide application or effectuates a State-wide policy." Although the declaratory relief is of State-wide impact, it will not sustain jurisdiction under 28 U.S.C. §1253. *Mitchell v. Donovan*, 398 U.S. 427 (1970). The limited injunctive relief affects only Dallas and Bexar Counties and the legislative districts in these Counties did not reflect a State-wide policy and hence the injunctive relief will not sustain jurisdiction. *Moody v. Flowers*, 387 U.S. 97 (1967). Clearly the State cannot appeal from the

denial of broader injunctive relief for it is not thereby aggrevied. *Gunn v. University Committee to End the War*, 379 U.S. 383 (1970).

APPELLEES' COUNTER STATEMENT OF THE CASE

Appellants' statement of the case is inadequate and misleading. Contrary to the suggestion of Appellants, this case is not simply a "political struggle" maintained by certain "political groups" (Appellants' brief, p. 3).* More appropriately, this case represents simply one more effort on the part of citizens of Texas to harmonize the election machinery of the State with the notions of equal protection. The reported decisions testify to the enduring nature of the effort.[1]

THE HISTORY OF THE APPORTIONMENT BILL

When the Texas Legislature adjourned in May 1971,

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*This brief is being printed before the printing of the appendix. Record references throughout the brief are as follows:

(1) App. refers to the Appendix to the Jurisdictional Statement.

(2) Dep. refers to the depositions contained in the record, wherever used the reference will include the name of the deponent.

(3) Tr. refers to the transcript of trial testimony.

[1] *cf. Smith v. Allright*, 321 U.S. 649 (1944); *Carrington v. Rash*, 380 U.S. 89 (1965); *U.S. v. Texas*, 384 U.S. 155 (1966); *Bullock v. Carter*, ...U.S....., 92 S.Ct. 849 (1972). Texas responded to the elimination of the poll tax with an almost equally repressive registration system which was thereafter invalidated in *Beare v. Smith*, 321 F.Supp. 1100 (S.D.Tex. 1971); the State responded to the invalidation of the filing fee system in *Carter v. Dies*, 321 F.Supp. 1358 (N.D.Tex. 1970) with yet another unconstitutional scheme, *Johnston v. Luna*, 338 F.Supp. 355 (N.D.Tex. 1972) Indicative of the State's hostility to expansion of the franchise was the attempt to drastically limit the newly enfranchised 18-21 year old voters with a palpably unconstitutional residency law (Artice 5.08 (m) of the Texas Election Code), see *Owenby v. Dies*, 337 F.Supp. 38 (E.D.Tex. 1971).

it had failed to apportion the Senate but had adopted an apportionment plan for the Texas House of Representatives. The House plan was promptly challenged. On August 10, 1971 a state trial judge declared the plan unconstitutional and in early September, the Texas Supreme Court affirmed, *Smith v. Craddick*, 471 S.W.2d 375 (Tex.S.Ct. 1971). The Court found the plan violated the Texas Constitution in the unnecessary cutting of county lines and in failing to observe the requirement of the Texas Constitution "that a county receive the member or members to which that county's own population is entitled when the ideal district population is substantially equalled or is exceeded."[2]

In its opinion, the Court chastised the State for failing to offer any evidence in explanation of the plan, a shortcoming the State has repeated in the present case. The opinion established some apportionment guidelines. (1) Counties which had population in excess of that necessary for one or more representatives could have that excess joined "with contiguous area of another county to form a district."[3] 471 S.W.2d at 378. (2) "Multi-member districts within a single county"

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[2]The original House plan had ignored this requirement of the Texas Constitution, e.g., Grayson County was bifurcated although it had sufficient population to entitle it to one representative. Similarly, McLennan County had ample population to entitle it to two representatives and was inexplicably divided.

[3]The plan adopted by the Legislative Redistricting Board, which is here under attack, violated this instruction in four instances without explanation. Thus, without explanation, the counties of Smith, Hidalgo, Brazoria and Jefferson were subdivided so that the surplus population was allocated into separate districts rather than into a single district. (App. 16A).

were constitutional "in the absence of some discriminatory effect."[4] 471 S.W.2d at 377.

CONVENING OF THE LEGISLATIVE REDISTRICTING BOARD

The failure to apportion the Senate required the convening of the State's Legislative Redistricting Board (Art. III, Sec. 28, Texas Constitution). On August 24, 1971, the Board convened; it was composed of Lieutenant Governor Barnes, Attorney General Martin, Land Commissioner Armstrong, State Comptroller Calvert and Gus Mutscher, Speaker of the House of Representatives. By that time the House redistricting plan had been declared unconstitutional by the trial court, nevertheless the Redistricting Board limited its consideration to the Texas Senate. This refusal was reaffirmed on September 14, 1971, when the Board resolved that it had no jurisdiction to apportion the House of Representatives. Finally, the Texas Supreme Court was compelled to issue mandamus requiring the Board to undertake House apportionment, *Mauzy v. Legislative Redistricting Board*, 471 S.W.2d 570 (Tex. S.Ct. 1971). As a result, on September 30, 1971, with more than half of its 60 day life having expired, the Board held its first hearing on House reapportionment, and for the first time began to consider division of the State into representative districts. (Minutes Legislative Redistricting Board, September 30, 1971).

THE FUNCTIONING OF THE LEGISLATIVE REDISTRICTING BOARD

The trial court found that the Legislative Redistrict-

[4]In drafting the present plan the Legislative Redistricting Board apparently ignored this cautionary language. (Calvert Dep. 58); (Johnson Dep. 28).

ing Board acted without any "rational direction" (App. 20A) in redistricting the Texas House. As an initial anomaly, the Board chose to treat the apportionment plan that had been adopted by the Legislature as a complete "nullity" (Martin Dep. 22-4), choosing to begin from "scratch" (Spellings Dep. 25). The Board held two public hearings in connection with House districting and then disregarded the testimony that it heard.[5] As member Armstrong put it, the Board was afflicted with an "apparent inability to all get together and do something in concert." (Armstrong Dep. 17). The result was that a staff, largely uninstructed, produced the plan that was ultimately adopted. The principal staff functionaries were Robert Johnson, Executive Director of the Texas Legislative Council and Secretary of the Legislative Redistricting Board, and Robert Spellings, of the Lieutenant Governor's staff.[6] According to Johnson, he received no instructions from the Board regarding whether to use multi-member or single member districts in the urban counties (Johnson Dep. 17-18) and was not instructed to consider the impact of the districting scheme upon racial minorities (Johnson Dep. 28) and as a result was simply not concerned with the effect of the plan on racial or ethnic minorities. (Johnson Dep. 35). The

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[5]Member Calvert of the Board deemed the testimony before the Board to be "all this crap." (Calvert Dep. 66). Martin and Barnes, confronted with testimony before the Board that over 60% of the citizens of Dallas County desired individual member districts (App. 31A), sought to justify their support for at-large districts for Dallas County as being in response to the public demand. (Martin Dep. 31); (Barnes Dep. 91, 126).

[6]Member Calvert had no staff working on reapportionment and depended upon Attorney General Martin and Johnson of the Legislative Council. (Calvert Dep. 9-10). According to Martin, the plan was prepared by the staffs of Barnes, Martin and the Legislative Council. (Martin Dep. 33).

final plan was drawn by Spellings, relying on information from Johnson and the Legislative Council. (Spellings Dep. 29-31). Spellings had not attended the public hearings of the Board (Spellings Dep. 36). Spellings drew the House plan beginning on a Tuesday afternoon about 5:00 and finishing about 2:00 in the morning on Wednesday.[7] (Spellings Dep. 26). During this short interval, Mr. Spellings redistricted the entire State of Texas; as he states it, starting "from scratch with a blank map." (Spellings Dep. 25).[8] According to Spellings, the only two Board members with whom he discussed the issue of single member versus multi-member districts, were Lieutenant Governor Barnes and Commissioner Armstrong, both of whom were committed to individual member districts. (Spellings Dep. 46). He never ascertained the attitude of the other Board members before constructing the plan that was ultimately adopted, a plan which left multi-member districts in every urban county other than Harris.

THE RESOLUTION OF THE SINGLE MEMBER V. MULTI-MEMBER QUESTION

The fundamental issue confronting the Board concerned the treatment of the metropolitan areas.[9] Each of the 24 witnesses who testified at the Board's two hearings was concerned solely with the issue of whether the State's urban counties should be divided into

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[7]This was the Wednesday immediately preceding approval of the plan by the Board on Friday, October 22, 1971. (App. 132C).

[8]Spellings had gained his initial experience with redistricting during the last twenty-four hours of the regular session of the Legislature. (Spellings Dep. 114).

[9]Mutscher refers to "debates raging with respect to metropolitan areas." (Mutscher Dep. 43).

single member districts. (Hearings of Redistricting Board, September 30, 1971 and October 1, 1971.)[10] During the course of the hearings, the Board's attention was specifically directed to the State's claim in the *Kilgarlin*[11] case that Texas had a policy of dividing a county once it became entitled to 15 or more legislators. Yet the Board, without ever formally facing the issue (Armstrong Dep. 12) allocated Dallas County 18 legislators to be elected at large and created 23 single-member districts in Harris County.

The Board's two prime movers were Lieutenant Governor Barnes and Attorney-General Martin, having the only staff working on the plan (Martin Dep. 33). Neither of them took time to resolve the issue of individual districts for Dallas County, and the other urban areas. Two members of the Board were publicly committed to single-member districts, Barnes (Barnes Dep. 111) and Armstrong (Armstrong Dep. 23). Attorney General Martin, who was Chairman of the Board, testified that he had no fixed opinion on the single-member district question and simply adopted the staff recommendation:

Q I understand that. Well, you say you do recall discussions, I take it, with other Board members on the question of dividing Dallas County; is that right?

A That is correct.

Q Did you take a position one way or the other

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[10]Fifteen of the witnesses were from Dallas County.

[11]*Kilgarlin v. Martin*, 252 F.Supp. 404, 444 (S.D.Tex. 1964). Barnes claimed to have never heard of the policy, despite the fact he was a defendant in *Kilgarlin*. (Barnes Dep. 135-6). Martin testified that he followed *Kilgarlin* (Martin Dep. 65), yet never alluded to the 1,000,000 population limitation described in *Kilgarlin*.

on whether Dallas County should be divided into—

A Not until the map was presented to us by the staff. At that time, well, that was the way Dallas County was drawn.

Q And so you just accepted the proposal of your staff; is that correct?

A I made the statement that I would sign a bill either way.

(Martin Dep. 30).

Martin was equally explicit that he gave no instructions to the staff concerning the treatment of Dallas County (Martin Dep. 39, 42). Robert Johnson, the Director of the Legislative Council and Secretary of the Board confirms:

Q . . . Did the Board at any time give you any guide as to whether you should strive for multi-member districts in the major counties, or for single-member districts?

A No sir, they never did give us any instructions on that.

Q The Board didn't instruct you on that point?

A No, sir.

Q Don't you consider that should have been a primary policy decision that should have gone into the formation of the Redistricting Plan?

A That was a policy decision for them to make, yes.

(Johnson Dep. 17).

It was Spellings, a staff member of Lieutenant Governor Barnes, that drew the plan leaving Dallas County with 18 Legislators to be elected at-large. According to him he was so instructed by Barnes (Spellings Dep.

10). Barnes explains his decision to leave Dallas and the other metropolitan areas as multi-member districts on the following basis:

> Q And how did it come about, that decision?
>
> A It came about by just an assumption that if we had a public hearing and a vote, that the vote would probably be three to two against it.

(Barnes Dep. 98).

As a consequence of this unfounded assumption[12] the single-member question was never confronted. The "raging" issue of single-member districts in the metropolitan areas simply vanished into a void of inaction. Barnes assumed that Martin opposed individual districts; Martin, having no opinion, assumed that the staff had recommended at-large representation (Martin Dep. 30), and the staff being of the view that this was a policy decision for the Board (Johnson Dep. 17), took no position on the issue.

Disappearing into the same void was the "state policy" that "limits the size of any multi-member district to fifteen representatives and that any county that attained a million or more residents in the future would be subdivided for representative districts." (App. 20-1A).[13]

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[12]Barnes' assumption was that Martin opposed single member districts. (Barnes Dep. 98-9). Yet, Martin testified he had no fixed views and would have approved a plan "either way". (Martin Dep. 30).

[13]This policy was articulated by the state in *Kilgarlin v. Martin*, 252 F.Supp. 404 (S.D.Tex. 1964). Among the defendants therein were: Crawford Martin as Secretary of State, Ben Barnes as Speaker of the House and Comptroller Robert S. Calvert. (See defendants' trial brief in *Kilgarlin v. Martin*, No. 63-H-390, Southern District of Texas, Houston Division.)

THE PLAN ADOPTED BY THE BOARD

The Legislative Reapportionment Plan[14] adopted by the Board reflects the whimsical method by which it was promulgated.

The State's two most populous counties are Harris and Dallas. Harris County was divided into 23 individual member districts. Dallas County was allocated 18 Legislators to run at-large. In four instances involving counties that had sufficient population to entitle them to more than one representative, the plan violates the State Constitution by allocating the surplus population to two districts rather than to a single district.[15]

The apportionment plan, rather than preserving the integrity of county lines, mutilated county lines without rhyme or reason. The most egregious example is that of Bexar County, where a portion of the north-

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[14]The State's brief asserts that the record is conclusive; "that the Board used the lowest population plan available to them." (fn. 3). This assertion is mind-boggling when one considers that the Board was presented but a single plan and that one was prepared by an admitted novice (Spellings Dep. 114), operating without significant guidelines, who drew the plan in a nine hour period during the late evening and night of October 19, 1971. (Spellings Dep. 9-10). True, the Board adopted the only plan available to them, for it was the only plan presented to them. This is, however, a far cry from the assertion that it was the best possible plan. The Board assured itself that it would not view a competing plan by rejecting Speaker Mutscher's request that it delay adoption of the plan until the following day so that he could present a new plan for consideration (Mutscher Dep. 11). Further, the Board ignored the plan presented to them by the State Republican Party with "extremely low" population differential. (Tr. 827-8).

[15]The affected counties are Smith, Hidalgo, Jefferson and Brazoria. As found by the trial court, the State "ventured no explanation whatsoever, even of the necessity for these depredations against the State policy." (App. 16A).

west part of the county was removed and joined with a rural legislative district (District 45). The net effect of this cutting of Bexar County was to increase rather than reduce deviation, for 3,762 persons were added to District 45, making it over populated by 3,445 persons, resulting in a deviation of 4.6%. The removal of this population from the county had no appreciable impact upon Bexar County's deviation figures. (See App. 135C, 154C).

Similarly, the treatment of Hidalgo and Jefferson Counties reflect that the plan had little concern for the integrity of political units. Jefferson County, with a population of 244,773, was divided into three separate districts. A three member district, District 7, was composed of most of the City of Beaumont, some rural area, and portions of other Jefferson County cities. (App. 144C). 20,326 voters, including residential portions of the City of Beaumont, were attached to District 5, composed of two rural counties, Hardin and Jasper. (App. 119C). Finally, a portion of Port Neches, consisting of 3,133 persons, was severed and attached to District 8 (App. 120C). Hidalgo County reflects another instance in which county and city lines were obliterated in a fashion which cannot be explained by efforts to minimize deviation. In that county, a two member at-large district was created (App. 143C). A portion of the county, consisting of 26,840 residents was severed and attached to District 49, consisting of the Counties of Kennedy, Kleberg and Willacy. Yet another portion of the county, consisting of 9,700 residents, was severed and attached to District 51, which results in a district composed of portions of Hidalgo and Cameron Counties. (App. 137C). The effect of this truncating of Hidalgo County was to divide the City of Mercedes, a city of some 18,000 per-

sons, into three separate legislative districts. (App. 143C). On the surface this combination of districting strategies does not supply its own credibility and the State made no attempt to explain why such peculiarities were required or even desired.

The State's brief suggests that the deviations contained in the apportionment plan are fully explained by the interest of the State in preserving the integrity of small rural counties. The fact is that the more substantial deviations appear in the areas in which counties have already been subdivided. Of the under-populated districts, the five that have the largest deviation are Districts 4, 78, 85, 92 and 62. (App. 153C-165C). Three of these are individual member districts in Harris County, which co-exist side by side with Harris County districts that are over-populated. (App. 127-8C, 132C). District 62 was created by carving a portion of Taylor County into an individual member district, composed of part of the City of Abilene. (App. 151C). Only one of the deviations could be attributed to a desire to preserve the integrity of county lines; that is District 4, composed of 3 relatively rural counties. (App. 119C).

THE EVIDENCE AND FINDINGS BELOW

The trial court, in keeping with Rule 52 F.R.C.P., included within its detailed opinion, findings of fact and conclusions of law. These findings are amply supported by the record; and much of Appellants' briefing efforts seek a redetermination of factual issues resolved by the trial court.

THE STATE-WIDE PLAN

The trial court found that deviation contained in the reapportionment plan was "not the result of a good

faith attempt to achieve population equality as nearly as practicable."[16]

The Court finds that "the policy of preserving the integrity of county lines has been blatantly violated by the slicing of Smith and Hidalgo counties without any justification." (App. 16A). A superficial inspection of the plan sustains this conclusion, yet the State made no attempt to show that these intrusions were either desirable or necessary.

In the disparate treatment of the metropolitan areas of the State, the Court found no rational or consistent State policy that would explain the deviations in the plan or provide any justification for the "haphazard combination of single and multi-member districts." (App. 22A). Noting that the State of Texas had "assured" the federal courts in *Kilgarlin v. Martin* that there was a state policy which limited the size of any multi-member district to 15 Legislators and that any county with a million population would be subdivided into legislative districts, the Court found that the creation of an at-large district in Dallas County violated this announced policy and that the State had come forward with no explanation for this sudden departure.[17]

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[16]Under the State's figures the plan contained a population deviation of 9.9%. The purported justifiication for the population deviation was the preservation of county lines, yet an analysis of the plan destroys the validity of the State's defense, e.g., the county line of Bexar County was violated for no apparent purpose, without explanation, and created a deviation substantially greater than would have existed had the county line been left intact. The method by which the plan was drawn reflects expediency rather than a good faith attempt at population equality.

[17]See *Kilgarlin v. Martin*, 252 F. Supp. 404, 444 (S.D.Tex. 1964). This announced State policy was called to the attention

Although the Court did not rest its decision upon the findings of disparate treatment between metropolitan areas of the State, it found that the differing treatment between Dallas and Harris Counties resulted in "radically unequal expense problems" for candidates who wish to run for office in areas with similar geographic characteristics. These radical differences between Harris and Dallas Counties in the cost of making a legislative race create an irrational classification on the basis of wealth, resulting in "substantive inequality on the basis of wealth in the protection afforded by the State's electoral laws to the rights of political association and voting." (App. 30A).[18]

The Court concluded its comparison of the treatment of Dallas and Harris Counties with the finding that "Texas has not established a compelling State interest nor even a rational relationship that justifies its disparate and unequal treatment of Harris County and every other metropolitan area of Texas." (App. 35A).

THE IMPACT OF THE MULTI-MEMBER DISTRICTING SCHEME UPON THE MINORITIES IN DALLAS AND BEXAR COUNTIES

We understand that counsel representing the Bexar County intervenors intend to devote substantial atten-

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of the Legislative Redistricting Board during the course of its hearings, and three of the members of the Board had been defendants in *Kilgarlin*. Despite the fact that Dallas has a population of 1,300,000 and was allocated 18 legislative representatives, the plan adopted by the Board allocated all the seats in Dallas County at-large.

[18]The Court found that a House of Representatives race in Dallas County would cost as much as $87,000. (App. 28A fn. 10). In 1970 the Republican Party of Dallas abandoned efforts to run a slate of legislative candidates because of the enormous expense involved in attempting to communicate with prospective voters in a County of 1,300,000. (Tr. 826-7).

tion to the record as relates to the plight of the Mexican-Americans of Bexar County; our discussion is limited to the impact of the at-large scheme upon the Negro minority of Dallas County. There are substantial similarities between the two counties.

Because of this Court's decision in *Whitcomb v. Chavis*, 403 U.S. 124 (1971), the trial court felt compelled to preliminarily compare the states of Indiana and Texas, noting the substantial differences in the mechanics of the political system of the two states,[19] and that Texas, unlike Indiana, has a colorful history of racial discrimination. (App. 36-7A).[20]

The virtually absolute exclusion of the Negro from the political process in Texas was not breached until 1966, when the first Negroes of the 20th Century were elected to serve in the Texas Legislature.[21] From 1900 to 1966 no Negro citizen of the State of Texas "was a nominee of the Democratic or Republican Party for any elective office in the State of Texas." (Pre-trial

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[19]Texas, as other southern states, remains essentially a one-party state, and despite the fact that the Republican Party conducts a primary, the participation is minimal. In Dallas County in 1970 there were 130,000 votes in the Democratic primary contrasted with 18,000 in the Republican. (Pl. Ex. 91-2). Texas also has that institution peculiar to the southern states, the run-off primary requiring an absolute majority for nomination. See Key, *Southern Politics in State and Nation*, Chap. 19, Sect. 3 (Vintage Books, 1949).

[20]By 1956 the Indiana Legislature had enacted statutes prohibiting discrimination against Negroes in such matters as public accommodations, employment and housing. (Ind. Ann. Stat. § 10-901, § 40-2307 and § 48-8501). This can be contrasted with the Texas Legislature under the leadership of the Dallas Legislative Delegation which was busy in 1957 enacting new racial segregation statutes. See Plaintiffs' Exhibit 87, "Dallas Lawmakers Record Heavy Segregation Vote."

[21]One of whom was from Dallas, Joe Lockridge. Lockridge, a virtual unknown in the Negro community, was selected by the downtown white structure as a candidate. (Tr. 709, 277).

order). The trial court concluded that this historical exclusion has not been meaningfully altered for the Negroes of Dallas, finding, "the Black community[22] has been effectively excluded from participation in the Democratic Primary selection process." (App. 40A).

THE POLITICAL CONTEXT OF DALLAS COUNTY

The trial court found that "hostility toward the Black community is still an integral part of Dallas County politics." (App. 41A, Tr. 349). While some areas of Texas may not have been wed to the system of racial discrimination, Dallas was clearly a bulwark of segregation[23] and "the legacy . . . of slavery, racism,

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[22]The 1970 census reflects a Dallas County population of 1,327,321, of which 220,616 are Negro, 90% of this Negro population is concentrated in a defined geographic area. (Tr. 200-1, Pl.Ex. 1). This black ghetto is characterized by poverty (Pl. Ex. 68), inadequate housing (Pl. Ex. 20, 36), inferior public services of transportation, lighting and streets (Tr. 336) and suffers the entire range of disabilities typical of urban black ghettoes. (See Crossroads Community Study for Dallas, May 1970, Pl. Ex. 31). Indeed, housing segregation in Dallas has become more severe since 1960. (Tr. 202).

[23]During the legislative battles of the late '50s over racial segregation, there was substantial opposition across the State to the enactment of new segregation statutes. This opposition was not to be found, however, among the Dallas legislators, who were in the vanguard of the segregationist leadership. (See Dallas News, May 1, 1958, "Dallas Lawmakers Record Heavy Segregation Vote," Pl. Ex. 87, Pl. Ex. 77, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46 and 47). As recently as 1958, it was still conventional political tactics in Dallas to urge defeat of a candidate because the candidate had the support of the NAACP. (See the Dallas News lead editorial urging defeat of Ralph Yarborough because he has the "support of NAACP rank and file." Pl. Ex. 82). Dallas County responded to school desegregation with reluctance befitting of its southern orientation; by 1964 Dallas County had been so successful in resisting school desegregation that only the first four grades in the public school system had been desegregated. (U.S. Commission on Civil Rights Public Education—1964 Staff Report, 220). Vestiges of the system of segregation continue to disappear slowly. (Tr. 345-6, 701, Pl. Ex. 69, 75).

of prejudice, . . . declines very slowly." (Tr. 290).

In the actual workings of Dallas County legislative politics, an organization known as the D.C.R.G. dominates the selection of Dallas County Legislators. In the words of the Court, "it is extremely difficult to secure either a representative seat . . . or the Democratic Primary nomination without the [D.C.R.G.] endorsement" (App. 40A).

The organization, although private, is composed principally of Democratic Party officials (Tr. 384-5, Pl. Ex. 53). The D.C.R.G. focuses its efforts in the white precincts of Dallas,[24] relying in large measure on distribution of slate cards designating the D.C.R.G. favorites[25]. (See Bock Dep., Ex. 16).

The trial court found that D.C.R.G., in formulating its legislative slate, "never" took into consideration "the interests of the Black ghetto." (App. 41A). Councilman Allen, a Negro member of the Dallas City Council, succinctly stated the participation of the

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[24]The State's witness, Kirk, a Dallas County Negro, was tendered as one intimately acquainted with Dallas County politics. He characterized the D.C.R.G. as "predominantly a white organization" and was unable to name any Blacks who "participate in the organization." (Kirk Dep. 30). Thus, the organization's political mailings are apparently not mailed in the Negro precincts (see Bock Dep. 58-9 and attached exhibits 4 & 5, Tr. 236, 352), warning as they do of "block voting" in the Negro areas of Dallas.

[25]The ability of this organization to dominate the legislative races is attributable to the enormous size of the legislative district, the complexity of the ballot (Tr. 342, see Ex. 16, Bock Dep.), the high costs of campaign (Tr. 232, App. 28A), all of which have resulted in a lessening of competition for the legislative races because of independent candidates' inability to compete with the D.C.R.G. slate. (Tr. 221, 340, 352). Indeed, the Republican Party, confronted with the overwhelming costs of attempting to wage a legislative campaign in Dallas County, abandoned its efforts in 1970 to wage a full-scale battle for legislative seats. (Tr. 827).

Black community in the candidate selection process of the D.C.R.G. in these words:

A In the selection process I would say none.

Q By that I mean the creation of their slate.

A I would say none.
(Tr. 687).

The inability of the Black community to have any effective participation in the Democratic Primary selection process[26] has resulted, as found by the trial court, in a "recurring poor performance on the part of the Dallas County delegation concerning the representation of Black interests in the Texas House of Representatives." (App. 41A). The record reflects,[27] as found by the trial court, that the D.C.R.G. as recently as 1970 was relying upon "racial campaign tactics in white precincts to defeat candidates who had the overwhelming support of the Black community" (App. 42A). Logically enough, the trial court concluded "that candidates elected on such a platform" could not "seriously represent the best interests of Dallas' Black community." (App. 42A).

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[26]This non-participation of the Negro community in the dominant Democratic Party coalition is partly explained historically, for as Dr. McCleskey testified, "The rules of the game—the political game in this State—were fixed and crystallized pretty much in the first half of the twentieth century when Blacks were effectively and almost entirely excluded from the political process." (Tr. 290).

[27]In the Democratic Primary run-off of 1970, the D.C.R.G. extensively mailed white precincts (Tr. 221, Bock Dep. 58-9) campaign literature directed against a white candidate, Stehr, urging his defeat in part because he had been engaged in bi-racial voter registration activities. (See Bock Dep., Exs. 4 & 5, Pl. Ex. 54 & 55). Although Stehr got 87.6% of the vote in the Negro ghetto, he was soundly defeated by the D.C.R.G. efforts in the white precincts. (Pl. Ex. 5).

SUMMARY OF ARGUMENT

The first section of argument is devoted to the defense of the trial court's conclusion that the "State of Texas simply had no rational State policy in the apportionment plan that resulted in the population deviations . . . and in the disparate treatments of metropolitan areas." (App. 19A). The Texas plan does not ring true. The State claims that deviation is attributable to a policy of preserving county lines. Yet some county lines are cut without explanation and meaningful deviations emerge that cannot be attributed to a desire to preserve political boundaries. Further, for no reason, the plan treats the State's metropolitan areas in radically different fashion, e.g., Harris County was assigned 23 Legislators in single-member districts; Dallas County was assigned 18 Legislators to run county-wide. This feature of the plan is in direct contradiction of representations made by Texas during the course of *Kilgarlin v. Martin*. There the federal courts were assured that the State had a policy of subdividing a county once it had become entitled to 15 legislators. Under all the circumstances the trial court properly found the plan not to be the "result of a good faith" apportionment effort. (App. 13A, fn.5).

With respect to the multi-member vs. single-member issue, two arguments are made.

Under the rationale of *Bullock v. Carter*, ... U.S. ....., 92 S.Ct. 849 (1972), the State's apportionment scheme for the major metropolitan areas such as Dallas and Bexar results in a discrimination on the basis of wealth and a denial of equal protection. The record is conclusive that the costs of a legislative race in Dallas County have become prohibitive, seriously limiting the capacity of candidates to wage contests in either the primaries or general election. The result is

a diminishing competition for legislative seats, and a delimiting of candidates solely on the basis of wealth. The decision to have Dallas County Legislators elected at-large and Harris County Legislators elected in single-member districts reflects no State policy whatsoever. Simply a "political choice" is constitutionally inadequate to justify the severe limitations imposed by the county-wide district upon the right to vote and to associate politically.

The county-wide legislative Dallas County carries with it an inherent bias against the Black citizens of that County, and results in a denial of fair representation in the Legislature. The historical exclusion of Texas Negroes from the political processes of the State is perpetuated by the at-large representation scheme. The private coalition which dominates legislative selection in Dallas was formed at a time when Negroes were non-participants and the coalition continues to determine the Democratic nominees for the Legislature, and the ultimate outcome of the election, without the participation of the Black community. The continued presence of racial hostility as a factor in Dallas County politics, and the prohibitive costs of campaigning county-wide, preclude Black citizens and their political allies from mounting effective county-wide legislative races. The result is that poor Blacks in Dallas are excluded from the legislative selection process and are victimized by recurring poor performance by the legislative delegation from Dallas County.

ARGUMENT

THE APPORTIONMENT PLAN COMBINES UNEXPLAINED DEVIATIONS AND AN IRRATIONAL SCHEME RESULTING IN A DENIAL OF EQUAL PROTECTION OF THE LAWS.

The State's argument is fairly simple. Under its theory, the apportionment plan contains only 10% deviation from the population ideal. This is a *de minimus* deviation which frees the State from having to offer any explanation of the deviations that the plan does contain, and further shields the State from any inquiry into the underlying rationale of the plan. This argument is essential to the State, for the apportionment plan is riddled with incongruities and will not withstand even a superficial examination. The State cannot prevail if the trial court was within its rights in looking to "the particular circumstances of the case" *Reynolds v. Sims*, 377 U.S. 553, 578, (1964); *Swann v. Adams*, 385 U.S. 440, 445, (1967).

This is not a case, as argued by the State, in which the trial court has become enslaved by numbers. Rather, the trial court looking to the facts and circumstances concluded: "The State of Texas simply had no rational State policy in the apportionment plan that resulted in the population deviations previously discussed and in the disparate treatment of metropolitan areas." (App. 19A). The State contends that the plan's population deviations are explained by a State policy which seeks to preserve the integrity of county boundaries. And yet, the Texas plan contains significant unexplained deviations that are unrelated to the preservation of county lines. For example, District 45 composed of six counties, if left alone, would have contained virtually the ideal population. For no reason, four census tracts were removed from Bexar County, violating the county integrity of Bexar County, and joined to the six rural counties to constitute District 45. The addition of Bexar County resulted in a population excess of 4.6% over the ideal district. The removal of the population from Bexar County did not appre-

ciably effect the deviation contained in that District's at-large representation scheme.[22] (App. 18A, 135C, 154C).

Three of the most under-populated districts contained in the reapportionment plan are Districts 78, 85 and 92. Each of these are individual member districts composed of various census tracts within Harris County. (App. 127C, 154C). Inasmuch as there were Harris County Districts that were overpopulated, the trial court concluded that these deviations were "insupportable." (App. 18A).

It was the State's view throughout that it had no obligation to explain these discrepancies, which are patently not attributable to a desire to maintain county lines, and hence we still have no inkling of how these peculiarities occurred.

The State districting scheme embodies not only deviations that belie the announced State policy of preserving county lines, but also embodies flagrant disparities in the treatment of the metropolitan areas. Harris County is divided into twenty-three single member districts. Dallas County is allocated eighteen members to run at-large. This discrepancy is not only unexplained but may well be the result of a misunderstanding among the members of the Redistricting Board and their staff.[23] We must assume that county integrity is an important ingredient in the life blood

[22]The State calculates the deviation of Bexar County by allocating the population excess equally to the 11 at-large districts. (App. 154C). Retention in the Bexar County District of the 3,762 persons in the four census tracts in question would have had no appreciable impact upon the Bexar County deviation, for it would have resulted in an average excess of 851 persons per district, slightly more than 1% per district, as contrasted with the 4.6% deviation created in District 45 by the addition of these Bexar County residents. (See App. 134C and 154C).

[23]See discussion, Statement of the Case, at page 10.

of Texas politics, since maintenance of county lines is the proffered justification for the plan's numerical deviation. Under the State's contention, it is presumably of value to a county to have a legislator or a cluster of legislators, whose district is co-extensive with the boundaries of the county. What then justifies this "built in bias tending to favor particular . . . geographical areas"?[30] Somewhat similar questions were raised in the course of *Kilgarlin v. Martin*, 252 F.Supp. 404 (S.D.Tex. 1964), because at that time Harris County had its legislative seats allocated along congressional district lines. The State had a ready explanation. Texas had adopted a cut-off point to determine when a multi-member district simply became too large and unwieldy. That cut-off point was 15 Legislators and/or a population of one million, 252 F.Supp. at 444. As a consequence of this policy, Harris County was subdivided in 1965. Texas explained to the Court that in the future if other metropolitan areas reach this cut-off, such counties would themselves be subdivided. Dallas County with 1,300,000 persons[31] in 1970 was allocated 18 Legislators to run at-large. Three members of the Legislative Redistricting Board, each of whom signed the plan under attack, were defendents in *Kilgarlin*.[32] Yet not one of these Board members uttered a word of explanation for the untimely disappearance of this State policy. Little wonder that the trial court concluded that the plan was not the "result of a good faith attempt" at reappor-

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[30]*Abate v. Mundt*, 403 U.S. 182, 187 (1971), that is, if it is important, why place Harris County at a disadvantage vis-a-vis the State's other metropolitan areas?

[31]This population is greater than that of Harris County in 1965.

[32]Ben Barnes, then Speaker of the House of Representatives, Crawford Martin, then Secretary of State, and Robert Calvert, the Comptroller of Public Accounts.

tionment. (App. 13A). The apportionment is not "free from any taint or arbitrariness or discrimination." *Roman v. Sincock*, 377 U.S. 695, 710 (1964). Further, Texas has failed to offer "acceptable reasons for the variations among the populations of the various legislative districts." *Swann v. Adams*, 385 U.S. 440, 443 (1967). Under all circumstances, the denial of equal protection is manifest.

THE RADICALLY DIFFERING TREATMENT OF THE STATE'S METROPOLITAN AREAS RESULTS IN A DENIAL OF EQUAL PROTECTION

The State's two major metropolitan counties are Harris and Dallas.[23] Harris was allocated 23 Legislators to be elected from single-member districts. Dallas County was awarded 18 Legislators to run at-large.

No explanation has been offered for the differing treatment of the metropolitan areas.[24] The trial court found that the State had not "even" come forward with a "rational relationship to justify its disparate treatment of Harris County and every other metro-

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[23]Harris had a 1970 population of 1,741,912; Dallas 1,327,321. U.S. Department of Commerce, 1970 Census of Population. The State's other major metropolitan counties are Bexar and Tarrant; they have populations of 830,460 and 716,317 respectively. Both of these counties were allocated at-large representation but portions of both counties were severed, and the severed portions attached to rural representative districts. (App. 135C, 150C).

[24]The State's jurisdictional statement ventured the suggestion that: "In Dallas County the majority Democratic Party has wanted to gamble on winner take all races." (p. 22). Presumably the risks were too great in Harris County. The State's brief does not urge this explanation. In discovery the State was asked to provide the "practical or theoretical justification" for use of multi-member districts. The only explanation was that it was simply a "political choice" by the Board. (Pre-trial, Dec. 31, 1971, 65A-68A).

politan area in Texas." (App. 35A).

The differing treatment of these urban counties has dramatic consequence for the democratic process. In Dallas County a legislative candidate through the primaries and general election must address his message to 500,000 voters. (P.Ex.8). This legislative district is larger than 15 States of the Union. (App. 38A, fn.14). The result is fairly predictable. Costs of election are astronomical.* The isolation of the legislative candidate from the electorate assures virtual anonymity, e.g. in a 1969 appearance before a legislative committee, the Democratic County Chairman of Dallas County was unable to name the 15 Democratic Legislators from Dallas County. (Tr. 293). Finally, the excessive number of legislative races contributes significantly to a lengthy and complicated ballot, with 68 races on the general election ballot of 1970. (Tr. 342, Pl. Ex. 25).

The trial court found an "unjustified differentiation between Harris County and every other metropolitan area with regard to the expense of running office and of communicating with an electorate." (App.35A). The inescapable result is a "classifying of candidates and their abilities to run and to form political associations according to wealth, affecting basically and un-

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*The Court found $87,000 to be a reasonable cost estimate for a Dallas County legislative race by candidates attempting to run independent of the D.C.R.G. slate. (App. 28A). But even with the cost savings available to candidates slated in the Democratic Primary by an organization such as the D.C.R.G., the costs are nevertheless staggering. In 1970 Candidate John Boyle, heavily supported by the D.C.R.G. precinct apparatus (See Bock Dep. 59-9, Exs. 4 & 5), reported expenditures of $22,409. (Def. Ex. 10). His report made no mention of the substantial expenditures incurred on his behalf by the D.C.R.G.

equally the poor" (App. 30A) and delimiting of "candidates and political associations." (App. 29A)."

In *Bullock v. Carter*, ...U.S..... 92 S.Ct. 849, (1972) this Court found that the Texas Primary filing fee system "creates barriers to candidate access to the primary ballot, thereby tending to limit the field of candidates from whom voters might chose." 92 S.Ct. at 856. "Examined in a reasonable light" *ibid*, the at-large scheme in Dallas County imposes an even more dramatic limitation upon voters and candidates.

Legislative contests in the Democratic Primary have become relatively infrequent (Tr.213) as a direct result of the high campaign costs in the county-wide legislative district. (Tr.341)." The effect of the high costs is not limited to the Democratic Primary. The Republican Party has had difficulty in recruiting candidates because of the at-large representation scheme (Tr.811) and in 1970 abandoned efforts to "field a slate of candidates for the State legislature" because of the enormous cost of such races. (Tr. 813, 826-7).

This Court invalidated the Texas Primary filing fee because: "Not only are voters substantially limited in their choice of candidates, but there is the obvious likelihood of this limitation falling more heavily on the less affluent segment of the community, whose favor-

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[36]The intervenors Reed, Goodwin and Moss, former Dallas legislative candidates, alleged that the at-large districts resulted in "the cost of running an effective primary and general election campaign for a representative of the Texas House of Representatives is beyond the financial means of lower and middle income persons." The record fully confirms the truth of the allegation.

[37]By contrast, the single member districts in which the 1972 Dallas primaries were held produced hotly contested races in both the Republican and Democratic primaries; 68 candidates in the Democratic and 32 in the Republican. (Sec'y of State, Certification of Primary Results 1972).

ites may be unable to pay the large costs required by the Texas system." *Bullock v. Carter*, ...U.S.....,
92 S.Ct. at 856. The county-wide legislative district, and the costs attendant to any campaign, have precisely the same effect. The record establishes that the maintenance of the county-wide district in Dallas was attributable at best to a political whim—there is no State policy that calls for the imposition of such hardship upon the electorate and potential candidates. The State "claims to be protecting" no interest, and the "interests of those who are disadvantaged by the classification" require invalidation of the county-wide scheme, *Williams v. Rhodes* 393 U.S. 23, 30 (1968).

THE COUNTY-WIDE LEGISLATIVE DISTRICT IN DALLAS RESULTS IN A DENIAL OF EQUAL PROTECTION TO THE BLACK MINORITY OF THAT COUNTY

The Dallas County Legislative District envisioned the election of 18 Legislators at-large; it contained no provision for geographic distribution of Legislators. This county-wide district would simply continue to freeze the Negro citizens of Dallas County[28] into a position as a permanently disadvantaged minority.[29]

[28]220,000 of the 1,827,000 citizens of Dallas were identified as Negro by the 1970 census; 90% are concentrated into an area which is 90% Negro. (Pl. Ex. 1, Tr. 200.)

[29]As testified by Dr. McClesky:

> "The rules of the game—the political game in this State—were fixed and crystallized pretty much in the first half of the 20th century when Blacks were effectively and almost entirely excluded from the political process . . ." (Tr. 290) and "in order for the group to have influence over the elected representative, it is going to be important that they have some kind of veto power over his election or some opportunity of his dis-election if he proves unsatisfactory. And, this is simply so much harder to do in a large multi-member district, because the minority is in a submerged posi-

This invidious effect is undoubtedly the product of a combination of factors, including historical exclusion of the Negro from the political process in Texas, the continued presence of racial hostility as a factor in Dallas County politics, and perhaps of most importance, the mammoth size of the legislative district and the severe dislocations thereby imposed upon the democratic processes.

THE EXCLUSION OF THE BLACK COMMUNITY FROM THE SELECTION PROCESS

Historically in Texas, Negroes have been excluded from meaningful participation in the political processes of the State. "From 1900 until 1966 no Black or Negro citizen of the State of Texas was the nominee of the Democratic or Republican Party for any elective office in the State of Texas," (Pre-trial order). It was only in "the decade of the sixties" that there was "really brought the unfolding of participation on the part of Blacks." (Tr. 291). In 1967 the first Negroes of the Twentieth Century were elected to serve in the Texas Legislature.[*] One of these was Joe Lockridge from Dallas. The election of Lockridge was attributable to a decision by the dominant political organization, the D.C.R.G., to slate a Black candidate in the Democratic Primary. (Tr. 265-6). The Black community did not select Lockridge as a candidate on the D.C.R.G.'s slate. (Tr. 277). He was, in the words of

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tion; it doesn't have the visibility and it doesn't have the strength. And, what you end up with, I am afraid, is a creation of permanent minorities and permanent majorities. And, this is something that, well Madison warned us about in the Federalist papers." (Tr. 291-2).

[*] Joe Lockridge, of Dallas, and Representatives Graves and Jordan, of Houston. (Pre-trial order).

Councilman Allen, "selected, frankly, by our downtown friends" and then the Black community was advised. (Tr. 709-10). The decision to include a Black candidate on the D.C.R.G. slate did not occur until the plaintiffs in *Kilgarlin*[41] challenged the at-large districting scheme in Dallas County because it resulted in denial of participation to the Negro community. It was the unanimous view of those most familiar with Dallas County politics, and the finding of the Court, (App. 40A) that the establishment of a Black seat in the Dallas County legislative delegation had done little to increase the participation of the Black community in the electoral process of Dallas County. Black candidates cannot achieve the Democratic nomination for the Legislature without the support of the D.C.R.G. (Tr. 276, 352, 686) and the Black community simply has no participation in the decision making processes of the D.C.R.G. and its all-important slate making. (Tr. 687, 418). As found by the trial court, "The Black community has been effectively excluded from participation in the Democratic Primary selection process." (App. 40A). The Democratic nomination remains the crucial determinant.[42] Only one of the fifteen Dallas County Legislators was Republican in 1970 and he was able to win only by dint of substantial expenditures, $31,000, (Tr. 815)), and endorsement in the general election by the D.C.R.G. and all major newspapers (Tr. 816). Even with all of this effort his winning margin was 730 votes out of 247,000. (Tr. 816).

The deleterious effect of the county-wide districting scheme is felt everywhere. It enhances the power of an organization such as the D.C.R.G. because the task of

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[41] *Kilgarlin v. Martin*, 252 F.Supp. 404 (S.D.Tex. 1965).

[42] For example, in 1970 there were 130,000 votes in the Democratic Primary and 18,000 in the Republican. (Pl. Ex. 91).

fielding and financing eighteen legislative candidates in a district of 1,300,000 persons is so formidable. The only candidates who have a chance of success are those for whom the D.C.R.G. is prepared, in its own words, to "exert extraordinary effort in the Precincts to insure your nomination in May and your election in November." (See Pl.Ex.53). It is not just the cost of election that enables the D.C.R.G. to predetermine the outcome. Communication barriers created by a district so massive prevent a voter from even recalling the names of the candidates without the aid of some crutch."

The county-wide scheme not only enhances the power of the D.C.R.G., but it stifles effective competition in either the Democratic Primary or in the general election. Thus independent candidates are simply unable to muster the estimated $87,000 to finance a legislative race. (App. 28A) and the Republican Party has been discouraged by these same cost factors from attempting to mount a serious challenge to the Democratic nominees for the Legislature. (Tr. 815, 827). The beleagured Black minority has nowhere to turn; there are no rival institutions to which they can attach their loyalty in an effort to break out of their disadvantaged position. The absence of Negroes from the nominees of the Democratic Primary and the Legislature is not simply "a function of losing elections"" but rather is a logical consequence of a political system that has

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"See the D.C.R.G. slate card for the Democratic Primary, admonishing the voter, "You will find over sixty candidates on the Democratic Primary ballot this Saturday; choosing will be difficult . . . Please use the convenient card on Saturday to help remember names." (Ex. 16, attached, Bock Dep.)

"*Whitcomb v. Chavis*, 403 U.S. 124, 153 (1971).

frozen Blacks into a permanent minority position."

THE PREJUDICIAL REPRESENTATION OF THE BLACK COMMUNITY

Dr. Conrad, Negro member of the School Board was firmly of the view that the Dallas County legislative delegation was "most definitely not" responsive to the needs of the Black community of Dallas. (Tr. 404)." The Court found a "recurring poor performance" by the Dallas legislators concerning the representation of Black interests. (App. 41A)." In large measure this conclusion is demonstrated by the tactics of those who dominate Dallas County legislative politics, the D.C.R.G. In 1970, two independent candidates, one Black, Brashear, and one White, Stehr, forced two of the D.C.R.G. candidates into run-offs in the Democratic Primary. The two independents ran with the overwhelming support of the Black voters, receiving respectively 90.2% and 87.6% of the votes in the Negro precincts. (Pl.Ex.9). The D.C.R.G., alarmed by the support of the independents were receiving in the Negro community, warned its white adherents of the "block voting tactics" in the Negro areas of the County. (Pl.Ex.54, 55, Bock Dep. 57-9, Tr. 236). In a broad mailing to the white precincts, the D.C.R.G.

"The ventilating effect of single member districts on the political process of Dallas County was demonstrated in the 1972 elections which were held in single member districts. Three Black legislators were elected, together with seven Republican legislators. (Sec'y of State of Texas Certification of Results of General Election.)

"Representative Graves testified that from his observation of the Texas Legislature, racial considerations still played a significant role in determining legislative decisions. (Tr. 123, 124, 137.)

"See fn.22, supra, for a description of the Black ghetto of Dallas.

attacked Stehr: "Words cannot describe his political philosophy any better than do the enclosed copies of a letter bearing his signature." (Pl.Ex.54). The enclosed letter had been written by Stehr the previous year as an invitation to a church dinner, announcing that the proceeds "will be used for voter registration activities mostly in predominantly Black or Latin-American neighborhoods." (Pl.Ex.54) It was not Stehr's platform that the D.C.R.G. sought to attack, rather, it was his "philosophy", i.e. participation in biracial voter registration efforts. The D.C.R.G. campaign was effective, and despite the heavy support in the Black precincts, the independent candidates were submerged in the county-wide totals, Stehr receiving only 33% in the white precincts and Brashear 27%. (Pl.Ex.9).

It was George Bock, Chairman of the D.C.R.G. and Secretary of the County Democratic Executive Committee, who prepared the anti-Stehr mailing (Bock Dep. 57) for distribution by the D.C.R.G. organization. Those who know Dallas County politics best, know that when the chips are down, the most effective appeal to the white voter is to frighten him with the prospect of block voting in the Negro precincts.[48] And the most damaging "philosophy" of all is sympathy toward the interests of the minority communities. An organization that relies upon such tactics cannot be responsible to the Black community; a candidate elected on the basis of such an appeal cannot deal fairly with the very segment of the population he has chosen to isolate by his campaign tactics; and finally, an electorate that

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[48]As recently as 1958 the Dallas Morning News, in a lead editorial, urged the defeat of a U.S. Senate candidate because he had the "support of NAACP rank and file." (See Pl. Ex. 82).

is still responsive to such appeals will be unlikely to insist that Black interests be given equal consideration.

The result of the county-wide legislative district in Dallas is prejudicial representation of the Black community. Whether by design or otherwise, the at-large scheme operates "to minimize or cancel out the voting strength of racial . . . elements of the voting population." *Fortson v. Dorsey*, 379 U.S. 433, 439 (1965); *Burns v. Richardson*, 384 U.S. 73, 88 (1966). The trial court quite properly held the "use of the multi-member district in Dallas County unconstitutional." (App. 42A).

CONCLUSION

We respectfully submit that if jurisdiction lies, the judgment of the trial court should be in all respects affirmed.

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